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SENTENCING MEMORANDUM

July 18, 2017

Honorable Alison J. Nathan
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Richard Phillips*
15 Cr. 95 (AJN)

Dear Judge Nathan:

Richard Phillips' sentencing proceeding is scheduled for August 8, 2017. We submit this letter, together with the annexed exhibits, to assist the Court in determining the appropriate sentence for a young man who is dedicated to a positive, productive, and law-abiding future.

Introduction

Richard Phillips is 25 years old and determined to turn this negative experience into an opportunity for growth. The conduct that led him to appear before the Court is the byproduct of a difficult childhood and it occurred at a low point in the trajectory of his life. Richard knows the benefits and satisfaction of legitimate employment and the joys of parenting. He has used his time in detention to reflect on his transgressions and to craft a plan for a positive reentry

into family life, community, and society. He aims to work in the construction trade, pursue his love of nature and creativity, and resume his role as a loving father to his young children. He recognizes that obtaining employment with a felony conviction will be a challenge, but he has always been a hard worker and his quiet determination will serve him well as he reaches towards stable adulthood.

Richard deeply regrets the actions that led to this prosecution. His loss of liberty over the past year has been a time of reflection and reorientation that has left him committed to building a productive and respectable future. As stated in his personal letter to the Court, Richard “accepts responsibility for his wrongs” and asks the Court’s forgiveness. (Exhibit A.) He is looking forward to a future where he earns money “the right way.” (Exhibit A.)

Richard’s Early Childhood Trauma

Richard’s parents, Marcia Anderson and Roy Phillips, struggled to realize the American dream for their blended families. Each had children from prior relationships. Marcia’s daughters, LaToya and Tifsona, resided with them, while Roy’s children lived with their mothers. Marcia and Roy immigrated to the Bronx from Jamaica, hoping to find safety, opportunity, and prosperity. They resided in a West Indian neighborhood near community members who shared their values, cuisine, religion, and social traditions. They were overjoyed when Richard was born, the only child of their loving union. Richard’s parents both worked and lived

modestly. Their shared dream was that their children might go to college, better themselves, and rise into the middle class.

Richard's parents were churchgoing and family focused. Richard's sister LaToya writes, "My Step dad was a family oriented man, who spent Sundays listening to music while my mother prepared Sunday dinner. We went on bus rides as a family to Dorney Park and other outings." (Exhibit B.) Richard's mother Marcia felt settled and secure with her family. Richard remembers his father dropping him off and picking him up at preschool as his work allowed.

The family's happiness and comfort was shattered when a stray bullet hit and killed Richard's father, an innocent bystander. Richard was five years old and had just started kindergarten. After his father's death, he retreated inward and became shy and introverted. LaToya remembers how hard it was to tell Richard about his father's death, and that afterward Richard was "not very outspoken." (Exhibit B.) His happy family had been destroyed, his father was gone, and his mother was not the same.

It is well recognized that children who suffer the death of a parent have an "increased likelihood of substance abuse, greater vulnerability to depression, higher risk of criminal [behavior], school underachievement, and lower

employment rates.”¹ These risks can be exacerbated by the way in which a child's family and community respond to the death. Research shows that “Moving home and separation from family and friends made adjustment to parental death significantly more difficult and increased distress in the bereaved child... When children experienced a progression of discontinuous events... [children] appear to be more likely to experience emotional difficulties and feeling of insecurity and loneliness in adult life... An important factor is whether the child feels safe and secure within a loving supportive family, with a surviving partner who is able to parent effectively. Even temporary changes in parental capacity were found to be distressing for children.” Changes in the surviving parent are “termed ‘double jeopardy’” whereby the child not only suffers the loss of a parent but the symbolic or temporary loss of the other parent [to grief] ... The longer term the distress experienced is compounded and there may be significant impact in adult life in terms of loss of self-esteem and self-worth.”²

Parental death is traumatic under the best of circumstances, but for Richard the instability caused by his father's death was compounded by many factors, especially his mother's chronic depression. When his father was killed, Richard was a kindergartner, transitioning into a new school. His mother, overwhelmed with

¹ J. Ellis, C. Dowrick, M. Lloyd-Williams, “*The Long-term impact of early parental death: lessons from a narrative study*”, Journal of the Royal Society of Medicine 106,58 (2013).

² *Id.*

grief, became severely depressed. His sisters gravitated towards their fathers' families for emotional support, adding to the void in Richard's family life. What little relationship Richard had with his paternal half siblings was extinguished by the death of their father. He had no meaningful opportunity to share his grief with any of his brothers and sisters. He was too young to fully understand how radically the world around him was changing, but was sensitive enough to recognize the whispering of adults and his mother's emotional withdrawal.

Richard's mother also had financial difficulties following the death of her spouse. Richard's father had been the family's primary breadwinner. Their small extended family lent emotional comfort following his death, but lacked the disposable income to help pay the mounting bills. Overwhelming grief made work a struggle for Richard's mother. By the time Richard was about 11 years old, she lost her job and fell into a deep and chronic depression. Richard remembers his mother barely getting out of bed or leaving the house for years. With his sisters no longer at home, Richard bore the brunt of his mother's depression alone. He was forced to fend for himself and bear witness to his mother's emotional paralysis.

When Richard was in sixth grade he lived on Barker Avenue in the Bronx, not far from the middle school he attended. Richard R. Green M.S. 113 is located on White Plains Road and 216th Street, in the heart of the Bronx gang territory described in the indictment. The middle school, notorious for violence and

academic under-performance, has since closed.³ Amidst the chaos of the school, Richard was quiet, studious, and aloof. He earned high grades and was placed in advanced classes.

When Richard was 14, he got a job working at a meat market near his home. His mother was still unemployed and he needed money to buy school clothes and help her with household expenses, including food. At first, Richard was tasked with sweeping the meat market and performing miscellaneous chores. As the owner realized that Richard was reliable, dependable, and intelligent, he started trusting Richard to run the cash register and interact with customers. Boys from Richard's school would pass by and tease him about "cutting up chickens," but Richard felt proud to be earning money to help his mother. In his reference letter for Richard, Alcot Brooks, his supervisor from the meat market, states: "[Richard] has been a loyal employee to our company... he was known to build good relations with the customers and his subordinates... he has been a great asset for our company... Mr. Phillips is highly recommended on my behalf." (Exhibit C.) Throughout middle and high school, Richard worked at the meat market every day after school. His

³ In 2014, Richard R. Green was one of the worst schools in the state, and was identified as needing immediate intervention. The city has thus far kept the school out of receivership by breaking it into four separate schools, and providing a host of new services, including mental health treatment. However math proficiency remains at 6 percent and 2 of the 4 schools remain "persistently dangerous." See Stephanie Snyder, "*At a Bronx campus, Renewal program takes shape with new school year*," Chalkbeat (Sept 11, 2015), available at <http://www.chalkbeat.org/posts/ny/2015/09/11/at-a-bronx-campus-renewal-program-takes-shape-with-new-school-year>.

mother remained essentially homebound from her debilitating depression and Richard's earnings became indispensable.

Richard's father's untimely death and his mother's chronic and disabling depression forced Richard to take on adult responsibilities at a young age. "Single mothers [sometimes] look... to their sons for input about household decisions, as confidants and protectors. And young men's relationships with their mothers often were transformed simply by witnessing hardship and conflict."⁴ Richard's mother's depression and his family's economic stress prematurely catapulted Richard into the role of economic provider and parental caregiver. At first blush, Richard's resulting experience seems largely positive—he was learning the value of hard work at an after-school job instead of acting out and hanging out. But his successful work experience did not help him work through the emotional turmoil. Richard never received any type of intervention—no bereavement counseling, psychological counseling, or other type of mental health treatment. A responsible child who is not acting out can slip through the cracks. It appears that this is what happened to Richard.

⁴ K. Roy, L. Messina, J. Smith, D. Waters, "Growing Up as 'Man of the House': Adulthood and Transition Into Adulthood for Young Men in Economically Disadvantaged Families," 143 *New Directions in Child and Adolescent Development*, 55–72, available at <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/106688/cad20054.pdf>

Richard and Keshawna

Richard met Keshawna Johnson when he was in sixth grade. They started dating in seventh grade and continued throughout middle school and high school. They met each other's parents and spent time together on the weekends. They were boyfriend and girlfriend through these awkward and complicated years, and their friendship blossomed into real love. Keshawna became pregnant when they were in 11th grade. Richard's mother and Keshawna's parents were shocked and upset, but pledged to support their children. Keshawna stayed in high school throughout her pregnancy and gave birth to their first child, daughter NPP.⁵ Richard dropped out in his senior year to work full time as a file clerk at American Transit Insurance so that he could support Keshawna and their daughter.

Richard's job was mind-numbingly dull and he ached to be with his new daughter. While the young couple saved to rent a place of their own, Richard lived with his mother, and Keshawna with hers. Richard looked for other employment through temp agencies. Eventually, Richard quit his job at American Transit to stay home and raise NPP. NPP moved in with Richard and his mother, and Richard became his daughter's primary caregiver, working intermittently at construction jobs.

⁵ Names of Richard's minor children have been abbreviated pursuant to Federal Rule of Criminal Procedure 49.1(a)(3).



Figure 2 Richard teaches NPP how to hold her new sister.

On days that Richard worked, Keshawna's mom cared for the baby. Keshawna soon became pregnant again and gave birth to their second daughter, NMP. Richard tried to better himself to get another job. He took GED prep classes, and eventually the GED exam, but he failed one of the sections. He considered enrolling in TCI College of Technology, and applied for financial aid. Despite earlier success with academics and employment,

Richard was floundering. Lacking a high school diploma or GED, the prospect of him getting

lucrative, rewarding employment was dim and impacting his self-esteem.

Richard's true source of satisfaction and success was parenting. He loved caring for his daughters and marking their development: watching them learn to crawl and then walk; listening to them utter words and then sentences.

According to Keshawna: Richard "was a committed father to our daughters, and was



Figure 1 Richard holds his daughters at Easter Sunday church service.

involved in every aspect of their lives, including taking our oldest NPP to and from school, assisting with daily living tasks such as hair grooming, dinner, bath, homework, etc. while I pursued a college degree.” (Exhibit D.) Richard is a proud and dedicated father. He took his daughters to get their hair done, to eat ice cream, and to play in the park. He dropped them off and picked them up from school, as his father had done for him.

Involvement with the Conspiracy

Unfortunately, the bond between Richard and Keshawna unraveled. Richard thought Keshawna had been unfaithful and he accused her of infidelity. In the spring of 2015, Keshawna broke off the relationship leaving Richard feeling lost and lonely. The only meaningful friendships Richard had cultivated over the years were with male classmates from middle school, who spent their days and nights hanging out on White Plains Road. After the breakup, Richard started spending more time with the old group, some of whom had begun calling themselves the Big Money Bosses (“BMB”).

As a young teen, Richard had displayed remarkable maturity, but his life had since become stagnant. He wanted to give his daughters the childhood he had missed. They had a loving father walking them to and from school; they took ballet lessons and skipped down the sidewalk eating ice cream. Richard loved being with his girls, but was largely unfulfilled in his life outside the home. The lack of a

degree or trade certificate made him unable to secure meaningful and well-paying employment. The difficulties he encountered as a child were impacting and hindering his progress.

Richard's old school friends had not grown or matured. When Richard started hanging around them again, he began smoking marijuana regularly, and selling it from time to time. He continued to care for his daughters, but sometimes stayed up all night hanging out with BMB affiliates who offered no positive influence. Richard was depressed and numbing himself by partying. During the summer of 2015, Richard escalated beyond smoking and selling marijuana. Richard never became a member of BMB, but his association with its followers evolved into selling crack with others within BMB's turf.

Richard and Keisha

Richard has known Keisha Arscott since 2011. They met at a salon where he was getting his daughter's hair done. Keisha remembers being impressed with Richard's dedication to his daughters. The two were friends off and on for years, and eventually started dating around the summer of 2015. Richard admired Keisha's strengths and optimism. A single mom to daughter IM⁶, Keisha is employed full-time at a Montessori School, rents her own apartment and is a confident and competent young woman.

⁶ Name of minor child abbreviated pursuant to F.R.Crim.P.49.1(a)(3).



Figure 3. Shortly before his arrest, Richard organized an Easter Egg Hunt for his girls in a neighborhood park. Here they are, inspecting their treasures.

Richard and Keisha had only been in a serious relationship for a short time before Richard's arrest. They were happy then, and have decided to stay together despite the difficulties posed by his incarceration. Richard and Keisha solidified their relationship by introducing their children to one another. Richard spent

considerable time with IM and eventually IM began to think of Richard as her father. As Keisha reports: All

three of his daughters miss him very much. (Exhibit E.)

Richard's Incarceration

Since his arrest and detention, Richard has thought extensively about his mistakes, his strengths, and his determination to rise above his conviction. Detained in the MCC, Richard has spent his time in custody completing programs and planning a successful reentry to family life and gainful employment. He has embraced the difficult and painful process of thinking about his past experiences, how they informed the choices he made, and how to ensure that he will choose a

better life for himself and his family in the future. He has committed to his relationship with Keisha and has made decisions about his professional future. He is focused on working in construction, advancing his education, and reestablishing his role as a strong, dependable parent and family man.

The time Richard has spent in MCC—his first time in prison—has been a wake-up call. He is moving beyond the shame he feels for his misconduct and is determined to turn the pain of his adolescence into a responsible and joyful adulthood. Conversations with his family, as well as his own introspection, have helped Richard confront the real costs of his involvement in this case. Having visited Richard regularly, we have witnessed his struggle and his progress and are confident that he has the strength, determination, and maturity to resume a productive, law-abiding life path.

Richard has availed himself of every opportunity at MCC. He has completed several programs, including the Non-Residential Drug Treatment Program and the Drug Abuse Education Course, which have helped him confront his own marijuana addiction, as well as forward-looking programs including Developing Creativity, Basic Bookkeeping, and Entrepreneurship. (Copies of certificates of completion are annexed as Exhibit F.)

Advisory Guideline Range

Richard pleaded guilty to Count One of the indictment pursuant to a plea agreement, which calculated the advisory guideline range to be 70 to 87 months' imprisonment based on Criminal History III. The plea agreement permits defense counsel to seek a downward departure, in addition to a variance, from the guidelines because of an overstated criminal history calculation.

Richard's Criminal History Category III is based on four arrests for simple marijuana possession, two of which occurred before he turned 18. These are essentially petty offenses that resulted in violations, not considered convictions under New York Penal Law, but counted under the Guidelines for criminal history purposes. Richard's marijuana use was a social vice, a way of self-medicating that began in late adolescence and continued into young adulthood. Since his detention began, Richard has been substance-free and has begun to fill the void by focusing on his future.

The calculated Criminal History Category of III equates to two felony convictions, even though Richard has none on his record. His combined misdemeanor and violations for marijuana possession are far less serious criminal conduct and are overstated in Category III, inappropriately elevating his advisory guideline range. At most, Richard should be in Category II. However, the circumstances that led to his use and possession of marijuana are mitigating

factors that justify a Category I designation. If Richard were to be designated to Category I his advisory guideline range would be 57 to 71 months incarceration.

18 U.S.C. § 3553(a) Factors Warrant a Substantial Variance.

Richard Phillips is a devoted father and a thoughtful and compassionate young man. The untimely death of his father and consequential circumstances that followed disrupted Richard's promising trajectory. Having matured and confronted his past, Richard is eager to resume the positive path he once traveled. Richard has demonstrated his ability to work diligently and parent lovingly. He has reflected on his potential and his ability to get back on the right track. He is fortunate to have the support of his extended community, as evidenced by letters from neighbors and friends. (See copies of letters annexed as Exhibit G.) Although opportunities for self-improvement within MCC are few, Richard has availed himself of every educational program available. (See Exhibit F.) He has strengthened his relationship with his daughters and his life partner, Keisha. Prison has served its purpose in Richard's case.

The probation department, having interviewed Richard, his partner and mother, considered his lack of a history of violence, and assessed the significant opportunity Richard has for a productive future, has recommended a significant variance to 36 months in prison. We suggest that a sentence of time served will allow Richard to begin his transformation outside. If granted this lenience, Richard

will focus on attaining the necessary trade skills and employment so that he may once again be with his daughters. Richard has served more than 15 months in prison for his crimes, and we believe he has demonstrated that he is sufficiently rehabilitated for a successfully reentry. Many of his codefendants have received significant variances. A sentence of time served (~15.5 months) would not be an unwarranted disparity, nor more than necessary to satisfy the purposes of sentencing.

Conclusion

Richard has used his time in prison wisely. He has matured and worked painstakingly to turn past experience into growth opportunity and future success. He looks forward to being a steady presence in his daughters' lives. Along with Richard, we respectfully ask the Court to grant him the opportunity to begin this next phase of his own life.

Respectfully submitted,

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Encs.

cc: AUSA Rachel Maimin